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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 91 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

Dr.N A DAVE

Appearance:

1. INCOME TAX REFERENCE No. 91 of 1993
MR MIHIR H.JOSHI FOR MR MANISH R BHATT
for Applicant.
MR NR DIVETIA for Respondent No. 1
MR SR DIVETIA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court at the instance of the revenue :

"Whether, on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee entitled to investment allowance on X-Ray machine installed by him ?"

2 We have heard Mr.M.H.Joshi for the revenue and Mr.S.R.Divetia for the respondent-assessee.

3 It is common ground between the parties that in case of Natvarlal Ambalal Dave vs. CIT, 225 ITR 936 this Court has laid down the principles of law which are required to be applied by the Tribunal to the facts of the case. In the aforesaid reported decision the Court has declined to answer the question and left it open to the Tribunal to decide the same u/s.260 of the I.T.Act. Keeping in mind the observations made in the said decision for the same reasons, we decline to answer the question referred to us and direct the Tribunal to decide the appeal after taking into consideration the principles enunciated in the aforesaid decision and after taking into consideration the facts which may be brought on record by both the sides.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt